

REMARKS

Applicants have amended the Abstract as set forth above. In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

The Office has objected to the Abstract asserting that it includes language which can be implied citing to MPEP § 608.01(b). Accordingly, Applicants have amended the Abstract to correct the language as set forth above. In view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw this objection.

The Office has rejected claims 1-4, 6-13, 16-19, 21-28 and 31 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,814,709 to Schwartz et al. (Schwartz), claims 5, 15, 20 and 30 under 35 U.S.C. 103(a) as being obvious over Schwartz in view of U.S. Patent No. 3,542,427 to Herpel et al. (Herpel), claims 14 and 29 are rejected under 35 U.S.C. 103(a) as being obvious over Schwartz in view of U.S. Patent No. 5,423,098 to Swezey et al. (Swezey). The Office has asserted that the rejection under 35 U.S.C. 102(e) might be overcome by a showing under CFR 1.132 that any invention disclosed, but not claimed in the reference was derived from the inventor of this application and thus is not the invention "by another."

Applicants respectfully traverse these rejections because Schwartz Article is not prior art with respect to the above-identified patent application. As set forth in ¶ 3 in the accompanying Declaration of Kenneth David Harris, he is the inventor of the subject matter disclosed, but not claimed in U.S. Patent No. 6,814,709 for a, "Massaging Bed Rest Cushion With Light" and relied on in the rejections in the outstanding office action. Accordingly, in view of the foregoing remarks and the accompany declaration, the Office is respectfully requested to reconsider and withdraw these rejections.

Additionally, Schwartz, Herpel, and Swezey, alone or in combination, do not disclose or suggest, "two armrests rotatably coupled to the backrest wherein the two armrests can rotate from a sitting position to a folded position along the two side edges of the backrest" as recited in claim 1, "a right armrest rotatably coupled to the right side of the backrest . . . a left armrest rotatably coupled to the left side of the backrest wherein the right

armrest and the left armrest can rotate into a folded position wherein the right armrest and left armrest are parallel to the left side and right side of the backrest” as recited in claim 16, or “two means for arm resting rotatably coupled to the means for back support wherein the two means for arm resting can rotate from a sitting position to a folded position along the two side edges of the means for back support” as recited in claim 31.

Contrary to the Office assertions, col. 5, lines 14-19 in Schwartz does not disclose that the armrests are rotatably coupled to the backrest where the armrests can rotate from a sitting position to a folded position along the two side edges of the backrest. Instead, col. 5, lines 14-19 in Schwartz discloses that the armrests are fixed. More specifically, the armrests are attached to the back portion with a hook and loop type fasteners which hold the armrests in a fixed position and prevent any rotation. Like, Schwartz, Herpel and Swezey, do not teach or suggest a massaging bed cushion with a pair of armrests rotatably coupled to the backrest where the armrests can rotate from a sitting position to a folded position along the two side edges of the backrest.

Accordingly, in view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claim 1, 16, and 31. Since claims 2-15 depend from and contain the limitations of claim 1 and claims 17-30 depend from and contain the limitations of claim 16, they are distinguishable over the cited references and are patentable in the same manner as claims 1 and 16.

The Office has rejected claims 1 through 4, 6, 8-10, 12, 16-19, 21, 23-25, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,273,174 to Cassini (Cassini) in view of U.S. Patent No. 5,895,365 to Tomlinson (Tomlinson), claims 5, 15, 20 and 30 under 35 U.S.C. 103(a) as being unpatentable over Cassini in view of U.S. Patent No. 3,542,427 to Herpel et al. (Herpel), claims 1, 7, 11-13, 16, 22, 26-28 and 31 under 35 U.S.C. 103(a) as being unpatentable over Cassini in view of U.S. Patent No. 6,682,494 to Sleichter, III et al. (Sleichter), and claims 14 and 29 under 35 U.S.C. 103(a) as being unpatentable over Cassini in view of Tomlinson and further in view of U.S. Patent No. 5,423,098 to Swezey et al. (Swezey).

More specifically, the Office asserts that Cassini discloses in Figures 1 and 8 a bed rest pillow with a backrest that has two side edges (2) and two armrests (7, 8) rotatably

coupled (via snaps; col. 2, lines 25 through 45) to the backrest where the two armrests can rotate from a sitting position to folded position along the two side edges of the backrest. The Office acknowledges that Cassini does not disclose or suggest one or more massaging units within the backrest, but asserts that Tomlinson discloses in Figures 1 and 3 a massaging bed cushion with one or more massaging units (20) within the backrest in the form of pulsating transducers (col. 4, lines 14 through 15) and with the massaging units being in electrical communication with a control panel (32) located in one of the armrests. The Office also acknowledges that Cassini does not disclose or suggest one or more latches to prevent the armrests from rotating about the backrest beyond the sitting position or the two armrests being coupled to the backrest by an axle that runs through a bottom portion of the backrest, but asserts that Herpel discloses in Figures 1 and 2 one or more latches (formed by the combination of elements 48 and 68) that prevent the armrests from rotating about the backrest beyond a sitting position. Further, the Office acknowledges that Cassini does not disclose or suggest one or more massaging units within the backrest, the one or more massaging units being massaging motors, a control panel, one or more heating sources in the backrest which are electrically coupled to and controlled by the control panel, a power supply coupled by electrical communication to a control panel, or the power supply being a battery. However, the Office asserts that Sleichter discloses in Figure 1 multiple massaging units (12) in the form of pulsating transducers or motors, a control panel (36), one or more heating sources (16), and a power supply in the form of a battery (col. 8, lines 11 through 15). The Office acknowledges that Cassini and Tomlinson do not disclose or suggest the backrest comprising a rectangular frame, but asserts that Swezey discloses in Figures 1 through 4 a backrest comprising a rectangular frame (22A) covered by a rectangular cushion (Claim 1, line 8) and a fabric (12; Claim 1, lines 9 through 10).

Cassini, Tomlinson, Herpel, Sleichter, and Swezey, alone or in combination, do not disclose or suggest, “two armrests rotatably coupled to the backrest wherein the two armrests can rotate from a sitting position to a folded position along the two side edges of the backrest” as recited in claim 1, “a right armrest rotatably coupled to the right side of the backrest . . . a left armrest rotatably coupled to the left side of the backrest wherein the right armrest and the left armrest can rotate into a folded position wherein the right armrest and left armrest are parallel to the left side and right side of the backrest” as recited in claim 16, or “two means for arm resting rotatably coupled to the means for back support wherein the two

means for arm resting can rotate from a sitting position to a folded position along the two side edges of the means for back support” as recited in claim 31.

Contrary to the Office’s assertion, col. 2, lines 25-45 in Cassini does not disclose or suggest that the armrests 7 and 8 are rotatably coupled to the backrest and can rotate from a sitting position to folded position along the two side edges of the backrest. The Office’s attention is respectfully directed to Fig. 2 and col. 2, lines 10-15 in Cassini which illustrates and states, “The wedge shaped arms are each inserted into the loops 5 and 6. The loops have an open area which is sufficient to receive the narrow end of the wedge shaped arms [7 and 8] and hold them in a frictional engagement with the ends 14 and 16 contiguous to the back surface 4 of the back pillow” (Emphasis Added). Accordingly, the wedged shaped arms 7 and 8 in Cassini are fixed in a frictional engagement with the loops 5 and 6. These loops 5 and 6 in Cassini hold and prevent any rotation of the arms 7 and 8. Like Cassini, Tomlinson, Herpel, Sleichter, and Swezey, do not teach or suggest a massaging bed cushion with a pair of armrests rotatably coupled to the backrest where the armrests can rotate from a sitting position to a folded position along the two side edges of the backrest.

The rotatable arms for the massaging bed cushion in accordance with the present invention provides a number of advantages. For example, as disclosed on page 4, lines 19-22 in the above-identified patent application, the right armrest 104 and the left armrest 106 can be rotated between about ninety degrees and one hundred and twenty degrees from the backrest 102 which enables the user to adjust the right and left armrests of the bed cushion to the desired angle. Additionally, as disclosed on page 9, lines 9-15 in the above-identified patent application, the rotatable arms allow the massaging cushion 100 to have a rectangular shape when in the flattened position to facilitate storage. With the rectangular shape when in a flattened position, multiple massaging cushions can be stacked vertically and the massaging cushions can be easily stored on the shelf in a folded position. Further, when in the flattened position, the massaging cushions each easily fit within a rectangular storage device, such as a box.

Accordingly, in view of the foregoing remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claim 1, 16, and 31. Since claims 2-15 depend from and contain the limitations of claim 1 and claims 17-30 depend from and contain the limitations of claim 16, they are distinguishable over the cited references and are patentable in the same manner as claims 1 and 16.

In view of all of the foregoing, applicant submits that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: May 13, 2005

Gunnar G. Leinberg
Gunnar G. Leinberg
Registration No. 35,584

NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1014
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) _____.

May 13, 2005
Date

Sherri A. Moscato
Signature

Sherri A. Moscato
Type or Print Name